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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**
16
17

18 IN RE: FACEBOOK PRIVACY LITIGATION
19
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21 Case No. 10-cv-02389-RMW
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23

24 **CLASS ACTION**
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27 **PLAINTIFFS' NOTICE OF MOTION
28 AND MOTION FOR CLASS
CERTIFICATION**

29 **[FILED UNDER SEAL PURSUANT
TO PROTECTIVE ORDER]**

30 Date: January 29, 2016
31 Time: 9:00 a.m.
32 Courtroom: 6
33 Judge: Hon. Ronald M. Whyte
34 Trial Date: None Set
35
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38

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD:**

3 **PLEASE TAKE NOTICE** that on January 29, 2016 at 9:00 a.m. or as soon thereafter as
4 the matter may be heard in Courtroom 6 of the above-captioned Court, located at 280 South 1st
5 Street, San Jose, California 95113, Representative Plaintiffs Katherine Pohl and Wendy Marfeo,
6 on behalf of themselves and the putative class (hereinafter "Plaintiffs"), will, and hereby do, move
7 for class certification of Plaintiffs' claims for breach of contract and fraud against Defendant
8 Facebook, Inc. ("Facebook").

9 This motion is brought pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule
10 23") on the ground that Plaintiffs' claims against Facebook can and should be adjudicated on a
11 classwide basis. The evidence submitted demonstrates that Plaintiffs have satisfied the
12 requirements of Rule 23(a) and 23(b)(3) and that class certification is appropriate.

13 This Motion is based upon this Notice, the following Memorandum of Points and
14 Authorities, the Request for Judicial Notice and Declaration of Kassra P. Nassiri and exhibits
15 thereto (including excerpts of deposition testimony) submitted herewith, the pleadings and papers
16 on file herein, any other matters of which the Court may or must take judicial notice, and any other
17 matters and written and oral argument or evidence that may be presented to the Court at or before
18 the hearing.

19 Dated: October 28, 2015

NASSIRI & JUNG LLP

20
21 /s/ Kassra P. Nassiri
22 Kassra P. Nassiri
23 Attorneys for Plaintiffs and the Putative Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This lawsuit is brought on behalf of nearly [REDACTED] Facebook users whose personal information was surreptitiously and knowingly transmitted by Facebook to third-party advertisers, in breach of Facebook's contracts with its users and contrary to Facebook's repeated, emphatic promises that it did not and would not make such disclosures.

When each of these Facebook users clicked on a third-party advertisement, Facebook

8 || www.ijerph.com | dx.doi.org/10.3390/ijerph12040888

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16 [REDACTED] Each of these users was denied the benefit of their bargain with Facebook, under which
17 the user should have been able to exchange consent to disclosure for valuable consideration on a
18 per-transaction basis. Thus, each user was damaged in an ascertainable amount.

19 This lawsuit is particularly appropriate for class treatment under Rule 23(a) and 23(b)(3) of
20 the Federal Rules of Civil Procedure (“Rule 23”). Class members’ identities are ascertainable from
21 Facebook’s own records. All of the mandatory requirements for class certification – numerosity,
22 commonality, typicality, and adequacy of representation – are met. Facebook’s records show that
23 Plaintiff Wendy Marfeo was one of the nearly [REDACTED] Facebook users whose user ID and/or
24 username were unlawfully disclosed to advertisers in the above-summarized manner. The
25 information Facebook has produced thus far indicates that the other named Plaintiff, Katherine
26 Pohl, did not experience such disclosure because [REDACTED]

27 However, Plaintiffs have enlisted two

1 other Facebook users who are ready, willing, and able to serve as representatives or co-
 2 representatives of the class if necessary.

3 The numerous common issues as to Plaintiffs' claims for breach of contract and fraud –
 4 *e.g.*, the existence of contracts, performance or excused non-performance, Facebook's breach,
 5 Facebook's false representations, its knowledge of falsity and intent to induce reliance, justifiable
 6 reliance, and issues pertaining to damages – clearly predominate over any arguable individual
 7 issues. And class treatment is the superior means of resolving these claims, because it would serve
 8 judicial economy and best protect the rights of absent class members.

9 **II. STATEMENT OF ISSUES TO BE DECIDED**

10 1. **Primary issue:** Whether this Court should certify the following class: All
 11 Facebook users in the United States who, at any time after May 28, 2006, clicked on a third-party
 12 advertisement displayed on Facebook.com configured to redirect the user to an external website,
 13 and which resulted in Facebook's capture of a referer header containing that user's Facebook user
 14 ID and/or username?

15 2. **Subsidiary issue:** May each class member and each qualifying ad click be
 16 ascertained from Facebook's ad click database?

17 **III. STATEMENT OF THE RELEVANT FACTS**

18 **A. Facebook's Agreements with its Users.**

19 Facebook is a social networking website whose stated mission is “to give people the power
 20 to share and make the world more open and connected.” Req. for Jud. Notice (“RJN”) ¶1, Exh. 1.
 21 By using or accessing Facebook in 2009 and 2010, persons agreed to Facebook's Statement of
 22 Rights and Responsibilities (“Statement”) and its Privacy Policy. Decl. of K. Nassiri (“Nassiri
 23 Decl.”) ¶¶4-5, Exhs. 2-4 [opening paragraph and ¶1 of each version of Statement], Exh. 5 [1st
 24 page]; RJN ¶¶2-3, Exhs. 6, 7 [¶1, “Scope” of each].

25 The Statement prohibited Facebook users from, among other things, providing “any false
 26 personal information on Facebook.” Nassiri Decl. ¶4, Exhs. 2-4 [¶¶4 *et seq.* of each]. Facebook
 27 explicitly reserved the right to terminate the accounts of users who violated their contractual

1 obligations. *Id.*, Exh. 2-4 [¶14 of each]. In consideration for these obligations, the Statement
 2 promised users: “**We do not give your content or information to advertisers without your**
 3 **consent.**” Nassiri Decl. ¶4, Exhs. 2-4 [¶10.2 of each] (emphasis added). The Statement also
 4 provided that it shall be governed by California law. *Id.* [¶15 of each].

5 The versions of Facebook’s Privacy Policy dated December 9, 2009 (¶4) and April 22,
 6 2010 (¶5) explicitly guaranteed as follows to Facebook users:

7 **How We Use Your Information**

8 * * * *

9 **To serve personalized advertising to you.** We don’t share your information with
 10 advertisers without your consent. (An example of consent would be if you asked us
 11 to provide your shipping address to an advertiser to receive a free sample.) We
 12 allow advertisers to choose the characteristics of users who will see their
 13 advertisements and we may use any of the non-personally identifiable attributes we
 14 have collected (including information you may have decided not to show to other
 15 users, such as your birth year or other sensitive personal information or
 16 preferences) to select the appropriate audience for those advertisements. For
 17 example, we might use your interest in soccer to show you ads for soccer
 18 equipment, but we do not tell the soccer equipment company who you are

19 RJD. ¶¶2-3, Exh. 6 [¶4], Exh. 7 [¶5]; Nassiri Decl. ¶5, Exh. 5 (p. 7, “Third Party Advertising”).

20 In an April 5, 2010 post on the official Facebook Blog, Facebook’s then-Director of
 21 Corporate Communications and Public Policy addressed the concerns of users who “asked to be
 22 opted-out of having their information shared with advertisers”:

23 *... This reflects a common misconception about advertising on Facebook. We
 24 don’t share your information with advertisers unless you tell us to (e.g. to get a
 25 sample, hear more, or enter a contest). Any assertion to the contrary is false.
 26 Period.* Instead, we enable advertisers to target anonymized demographics and
 27 attributes. That is, a company selling boats can target people between 40 and 50
 28 years old who expressed an interest in boating. However, *we never provide the
 advertiser any names or other information about the people who are shown, or
 even who click on, the ads.*

29 RJD ¶4, Exh. 8 (p. 1) (emphasis added). Responding to similar widespread user concerns,
 30 Facebook’s Chief Executive Officer, Mark Zuckerberg, made these assurances in a Facebook Blog
 31 post on February 16, 2009:

32 Our philosophy is that people own their information and control who they share it
 33 with. When a person shares information on Facebook, they first need to grant

1 Facebook a license to use that information so that we can show it to the other
 2 people they've asked us to share it with. Without this license, we couldn't help
 3 people share that information.

4 ...

5 In reality, we wouldn't share your information in a way that you wouldn't want.
 6 The trust you place in us as a safe place to share information is the most important
 7 part of what makes Facebook work....

8 Nassiri Decl. ¶7, Exh. 9.

9 **B. Facebook's Nonconsensual Disclosures of Users' Personal Information.**

10 A May 21, 2010 article in the *Wall Street Journal* (the "WSJ Article") revealed that
 11 Facebook had violated its promises not to disclose user identities to advertisers. The WSJ Article
 12 reported that Facebook had been sending data to advertising companies that could be used to find
 13 Facebook users' names and other personal details. Nassiri Decl. ¶8, Exh. 10.

14 On May 24, 2010, an article by Facebook engineer Matt Jones titled "Protecting Privacy
 15 with Referrers" was posted on the "Facebook Engineering" page. Nassiri Decl. ¶9, Exh. 11. Jones
 16 stated that Facebook recently had "quickly fixed an issue after being contacted by a Wall Street
 17 Journal reporter regarding an unintentional oversight in the data shared with our advertisers by
 18 your browser when you click some ads on Facebook." This data—including the user ID of the
 19 Facebook user who clicked on the ad—was revealed "in the referrer link visible to advertisers
 20 when someone clicked on an ad." *Id.*, Exh. 11 [1st page].

21 As Jones explains in a declaration he submitted ("Jones Decl.") (Dkt. 245; RJD ¶5, Exh.
 22 12) in support of Facebook's Motion to Dismiss Plaintiffs Katherine Pohl and Wendy Marfeo for
 23 Lack of Standing (Dkt. 243 *et seq.*), each item of content on the Internet has a unique resource
 24 locator ("URL") which differentiates it from other content. When a person clicks a link on one
 25 web page that directs to a second page, a "referer header" is sent by the user's web browser to the
 26 web server for the second page. As a function of how the Internet and Internet browsers work in
 27 general, referer headers typically contain certain information, including the URL of the page the
 28 user was on when clicking the link to the second page. Jones Decl. ¶2. A URL invariably includes
 the web page's domain name; thus, the URL for every page on Facebook includes

1 “facebook.com/”. However, [REDACTED]
 2 [REDACTED] . Depo. of
 3 J.E. Hung (“Hung Depo.”) 155-56 (Nassiri Decl. ¶11, Exh. 13).

4 Facebook chose to design the URLs of its users’ profile pages so that they routinely
 5 include users’ Facebook user ID or username, [REDACTED]
 6 [REDACTED] . For example, “for a user with the username johndoe, the URL
 7 might be www.facebook.com/johndoe.” Jones Decl. ¶2. In addition, prior to July 2010, Facebook
 8 included “a particular string of characters in users’ profile page URLs (‘ref=profile’) when the
 9 user took certain steps to navigate to his or her own profile page.” *Id.* ¶6. Thus, due to Facebook’s
 10 own design decisions, a referer header generated when a Facebook user clicked an ad contained
 11 both the “ref=profile” string and the person’s user ID or username, thereby revealing the user’s
 12 identity. *Id.* ¶¶6-7; Hung Depo. 155-56.

13 This unauthorized disclosure of user IDs and usernames to advertisers was not a glitch in
 14 the system, as Facebook insists, but a known and intended feature. Like many websites, Facebook
 15 uses the practice of “URL redirection,” in which a web server redirects a visitor to a URL different
 16 from the one the visitor requested. And like many advertising platforms, Facebook uses [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED] . This process is explained in the report of
 20 Facebook’s expert, James E. Hung. Nassiri Decl. ¶12, Exh. 14.

21 To summarize, when a user clicks an ad on Facebook, the user’s browser sends a [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]

1 [REDACTED] Nassiri Decl. ¶12, Exh. 14 [¶¶9-19 & Figure 2]. [REDACTED]
2 [REDACTED] *Id.*
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Nassiri Decl. ¶12, Exh. 14 [¶¶15-19 & Figure 2]. [REDACTED]
7 [REDACTED] *Id.* ¶9, Exh. 11 (p. 3).
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] *Id.*
12 Contrary to its protestations of ignorance, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] *Id.* (emphasis added); *see also* Exh. 16.

22 Indeed, Facebook chose to delay “rolling out a change” until May 24, 2010, one business
23 day after its [REDACTED] by the May 21, 2010 WSJ Article. Nassiri Decl., Exhs. 11, 15.
24 Jones’s May 24, 2010 post revealed that Facebook had been working “for the past few months” on
25 “completely remov[ing] all user IDs from appearing in referrer links before web browsers send the
26 links to external websites, including to advertisers.” *Id.* ¶9, Exh. 11 (p. 1). Jones discussed several
27 alternatives to the 302 status code, and stated that Facebook ultimately implemented “redirect

1 methods that work in all the major browsers, even if none of them works in every browser.”¹ As
 2 the evidence shows beyond dispute, each of these alternatives was available to Facebook all along.
 3 *Id.* ¶9, Exh. 11 (pp. 3-5).

4 In supplemental interrogatory responses dated March 17, 2015, Facebook stated that its
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 [REDACTED] Nassiri Decl. ¶15, Exh. 17 [Rog Nos. 7, 8, 13]. In those sworn responses, Facebook
 11 claimed [REDACTED]
 12 [REDACTED]. *Id.*

13 However, in its most recent supplemental interrogatory responses dated May 6, 2015,
 14 Facebook belatedly revealed it could, [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]

19 [REDACTED] Nassiri Decl. ¶16, Exh. 18
 20 [Rog Nos. 7, 8, 13]. [REDACTED]
 21 [REDACTED] *Id.*

22

23¹ As Jones discusses, certain combinations of status codes and browsers “result in a blank referrer”
 24 being sent to the advertiser, which is “[g]ood for privacy, but bad for [the advertiser’s] ability to
 25 understand where its traffic comes from,” and therefore “[n]ot ideal” for Facebook. Other
 26 combinations fail to do anything at all. But other combinations achieve the result Jones described
 27 as “perfect” for Facebook and its advertisers: the referrer header shows Facebook’s “redirect” page
 (“a.com/redirect”) – thus revealing to the advertiser that its traffic comes from Facebook – and
 removes the user ID, username, and URL of the page the user clicked. Nassiri Decl. ¶9, Exh. 11
 (pp. 3-5).

1 Facebook was compelled by this Court to produce an ad click table with [REDACTED]
 2 [REDACTED]
 3 [REDACTED] Nassiri Decl. ¶17, Exh. 19. Although this produced table pertains only to [REDACTED] users,
 4 *id.*, Facebook has conceded it has [REDACTED]
 5 [REDACTED]
 6 [REDACTED] *Id.*, Exh.
 7 18. Armed with just that username or user ID, the recipient (in this case, the advertiser) could type
 8 in facebook.com/[username] or facebook.com/[userID] and be directed to that user's Facebook
 9 profile page with the user's real name, pictures, etc. *Id.* ¶¶18-21, Exhs. 20, 21, 22, 23. The
 10 advertiser then would have the option of sending that user a direct message via Facebook, since
 11 any Facebook user "can send messages to anyone [else] on Facebook." RJD ¶6, Exh. 24.

12 Facebook claims that other factors prevent it from determining whether these ad clicks
 13 resulted in transmission of a referer header with the "ref=profile character set" and the user ID or
 14 username of a Facebook user. In particular, Facebook speculates that [REDACTED]
 15 [REDACTED]
 16 [REDACTED] Nassiri Decl. ¶15, Exh. 17 [Rog No.
 17 7]. However, Facebook has offered no competent evidence of such measures. Its expert witness,
 18 Hung, estimates that [REDACTED]

19 [REDACTED] *Id.* ¶¶12, 22, Exh. 14 [¶33 n.18],
 20 Exh. 25; Hung Depo. 131-36. But that number represents only [REDACTED]
 21 [REDACTED] – of the number of class members. Nassiri Decl. ¶16, Exh. 18. Facebook has
 22 presented no evidence of [REDACTED]
 23 [REDACTED] discussed by Hung. *See id.* ¶12, Exh. 14; Hung Depo. 123-25.

24 Facebook also opines that [REDACTED]
 25 [REDACTED]. Nassiri Decl. ¶15, Exh. 17
 26 [Rog No. 7]. The only evidence Facebook has presented on this point is [REDACTED]
 27 [REDACTED]

1 [REDACTED] *Id.* ¶12, Exh. 14

2 [¶¶53-54]. Facebook claims it cannot determine [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] *Id.* ¶¶15-16, Exhs. 17-18.

6 Facebook has an “[REDACTED]

7 [REDACTED] Jones Decl. ¶¶9-10.

8 Presumably, the [REDACTED]

9 [REDACTED]

10 [REDACTED]. Hung’s notes pose the question: [REDACTED]

11 [REDACTED] Nassiri Decl. ¶23, Exh. 26. This further
12 raises an inference that Facebook’s own records identify which Facebook users are class members
13 and which are not.

14 **C. Class Members’ Damages Resulting from Facebook’s Conduct.**

15 Facebook denied class members the benefit of their bargain with Facebook by
16 surreptitiously divulging their personal information to advertisers. Facebook’s Privacy Policy
17 contemplated users *exchanging* consent for valuable consideration (e.g., “to receive a free
18 sample”) on a per-transaction basis. RJD ¶¶2-3, Exh. 6 [¶4], Exh. 7 [¶5]. This sort of exchange of
19 value between consumers and advertisers (or marketers) is now routine and commonplace.
20 Marfeo testified that she has participated in various companies’ “rewards” programs, where she
21 provided the companies her name, email and home address, and Facebook and Twitter pages, and
22 in exchange received tangible benefits such as coupons for free sodas, a beach chair and table, and
23 t-shirts. Pohl testified that she has entered into similar exchanges with advertisers. Depo. of W.
24 Marfeo 129-31, 219-27; Depo. of K. Pohl 43-47 (Nassiri Decl. ¶¶24-25, Exhs. 27, 28).²

25 _____
26 ² There is abundant evidence, particularly on the Internet, of opportunities for individual
27 consumers to exchange their information with advertisers for valuable consideration. For example,
Google routinely offers up to \$1,000 of *per-order* purchase protection to consumers who agree to
share their order information and email address with Google. See Google Trusted Stores Customer

1 The evidence shows this type of consumer information has become commoditized and has
 2 an ascertainable monetary value. [REDACTED]

3 [REDACTED] Depo. of F. Vickery ("Vickery
 4 Depo.") 28-29, 57-63, 69-71, 73-74, 84, 87, 89-100, 104-06, 109-10, 113, 127-30, 132-33, 226-28,
 5 244-47; Nassiri Decl. ¶¶26-28, Exhs. 29, 30, 31. [REDACTED]

6 [REDACTED]
 7 [REDACTED]. *See, e.g.*, Vickery Depo. 57-63, 69-71, 89-94 (referring to [REDACTED]
 8 [REDACTED]); Nassiri Decl. ¶¶27-28, Exhs. 30, 31. [REDACTED]

9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]. Vickery Depo. 69-71, 92-97, 104-06.

12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]. Vickery Depo. 96-98. The advertiser may also contact the user directly by sending a message via Facebook, like
 15 any Facebook user can do. RJD ¶6, Exh. 24. Thus, class members are entitled to damages based
 16 on the [REDACTED] Vickery Depo. 69-71,
 17 92-98, 104-06, 109-10, 113, 127-30, 132-33, 226-28, 244-47.

18 **IV. ARGUMENT**

19 **A. Class Certification Should Be Granted Under Rule 23.**

20 This Court has broad discretion to determine whether a class should be certified. *See, e.g.*,
 21 *Armstrong v. Davis*, 275 F.3d 849, 871 n.28 (9th Cir. 2001). In deciding a class certification
 22 motion, courts focus on whether the requirements of Rule 23 have been satisfied, rather than who
 23 will prevail on the merits. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 178 (1974). Rule 23(a) sets
 24 forth four mandatory prerequisites for class certification: (1) the class must be so numerous to

25
 26
 27 Help, https://support.google.com/trustedstores/answer/1669761?hl=en&ref_topic=4544280 (last
 28 visited Oct. 27, 2015).

1 render joinder of all members “impracticable”; (2) there are common factual or legal questions; (3)
 2 the representatives’ claims or defenses are “typical” of those of the class; and (4) the
 3 representatives and their counsel must “fairly and adequately protect” class members’ interests.
 4 Rule 23(b)(3) permits class certification where the common factual or legal questions
 5 “predominate” over individual questions, and where “a class action is superior to other available
 6 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a), (b)(3).

7 “The court is bound to take the substantive allegations of the complaint as true” in
 8 determining the appropriateness of class certification. *Blackie v. Barrack*, 524 F.2d 891, 901 n.17
 9 (9th Cir. 1975). At this stage, “the court must only determine if the plaintiffs have proffered
 10 enough evidence to meet the requirements of FRCP 23, not weigh competing evidence.” *Chun-*
 11 *Hoon v. McKee Foods Corp.*, No. C-05-620 VRW, 2006 WL 3093764, at *4 (N.D. Cal. Oct. 31,
 12 2006) (citations omitted).

13 **B. An Identifiable and Ascertainable Class Exists.**

14 As a threshold matter, parties seeking class certification must establish the existence of an
 15 identifiable and ascertainable class, and provide a precise, objective, and presently ascertainable
 16 class definition. *Brazil v. Dell Inc.*, No. C-07-01700 RMW, 2010 WL 5387831, at *2 (N.D. Cal.
 17 Dec. 21, 2010). Plaintiffs seek to certify the following class: All Facebook users in the United
 18 States who, at any time after May 28, 2006, clicked on a third-party advertisement displayed on
 19 Facebook.com configured to redirect the user to an external website, and which resulted in
 20 Facebook’s capture of a referrer header containing that user’s Facebook user ID and/or username.
 21 As the discussion herein shows, this definition bases class membership on “a set of objective
 22 criteria, making the class easily identifiable and sufficiently ascertainable for certification.” *Id.*

23 **C. The Class Meets All Requirements Under Rule 23(a).**

24 **1. The Class is Sufficiently Numerous.**

25 “There is no absolute minimum number of plaintiffs necessary to demonstrate that the
 26 putative class is so numerous so as to render joinder impracticable.” *Breeden v. Benchmark*
 27 *Lending Group, Inc.*, 229 F.R.D. 623, 628 (N.D. Cal. 2005). However, courts have found

1 numerosity satisfied when the class comprises as few as 40 members. *Villalpando v. Exel Direct*
 2 *Inc.*, 303 F.R.D. 588, 605-06 (N.D. Cal. 2014). Where, as here, there is “a nationwide class with
 3 millions of class members,” numerosity “is clearly satisfied.” *Hanlon v. Chrysler Corp.*, 150 F.3d
 4 1011, 1019 (9th Cir. 1998).

5 **2. The Commonality Requirement Is Satisfied.**

6 Commonality exists where class members’ claims depend on at least one “common
 7 contention,” which “must be of such a nature that it is capable of classwide resolution – which
 8 means that determination of its truth or falsity will resolve an issue that is central to the validity of
 9 each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551
 10 (2011). Even a “single common question” may satisfy this requirement. *Id.* at 2556; *accord Mazza*
 11 *v. American Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (even after *Wal-Mart*,
 12 “commonality only requires a single significant question of law or fact”); *Hanlon*, 150 F.3d at
 13 1019 (“Rule 23(a)(2) has been construed permissively”; “[a]ll questions of fact and law need not
 14 be common to satisfy the rule”); *Smith v. Cardinal Logistics Mgmt. Corp.*, No. 07-2104 SC, 2008
 15 WL 4156364, at *5 (N.D. Cal. Sept. 5, 2008) (“The existence of shared legal issues with divergent
 16 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
 17 remedies within the class.”).

18 Commonality exists where class members allegedly “have suffered the same injury,”
 19 *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982), such as breach of the same
 20 contract. *DuFour v. Be LLC*, 291 F.R.D. 413, 418 (N.D. Cal. 2013) (commonality satisfied where
 21 defendant talent agency allegedly breached contracts with consumers by failing to provide services
 22 as of the date it went out of business); *see Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165-66
 23 (9th Cir. 2014) (commonality satisfied where plaintiffs alleged employer had a practice or
 24 unofficial policy of requiring class member to work unpaid overtime “off the clock”); *Evon v. Law*
 25 *Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (commonality found where class
 26 members “received a debt collection letter at their place of employment without first giving their
 27 consent” in violation of federal statute); *Facciola v. Greenberg Traurig LLP*, 281 F.R.D. 363, 369

1 (D. Ariz. 2012) (commonality satisfied in securities case based on Ponzi scheme); *cf. Wal-Mart*,
 2 131 S. Ct. at 2557 (no commonality where plaintiffs offered no evidence of any common approach
 3 to exercising discretion that pervaded company and resulted in pay disparity based on gender).

4 **a. Common Questions Exist on the Contract Claim.**

5 The essential elements of Plaintiffs' claim for breach of contract are: (1) existence of the
 6 contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and
 7 (4) resulting harm or damage to plaintiff. *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal. App. 3d
 8 887, 913, 92 Cal. Rptr. 723 (1971); Cal. Civ. Jury Instr. (CACI) No. 303. All of these elements are
 9 subject to common proof in this case.

10 By using or accessing Facebook, every class member agreed to Facebook's Statement and
 11 Privacy Policy, which uniformly promised at all relevant times that Facebook would not share
 12 users' personal information with advertisers without users' consent. Nassiri Decl. ¶¶4-5, Exhs. 2-4
 13 [¶10.2 of each], Exh. 5 (p. 7); RJD ¶¶2-3, Exh. 6 [¶4], Exh. 7 [¶5]. Thus, the contract's existence
 14 is a matter of common classwide proof. This is sufficient, by itself, to satisfy Rule 23(a)(2)'s
 15 commonality requirement. *See DuFour*, 291 F.R.D. at 418 (although certain contract features
 16 "such as the price and duration terms" were not uniform, plaintiffs established commonality by
 17 identifying relevant uniform treatment of class members).

18 Commonality also exists as to class members' performance or excused non-performance of
 19 their contractual obligations, particularly their provision of no "false personal information."
 20 Nassiri Decl. ¶4, Exhs. 2-4 [¶¶4 *et seq.* and 14 of each]. Facebook records should show whether
 21 any class members' accounts were terminated for violating their contractual obligations. *See id.*
 22 ¶¶15-21, Exhs. 17-23. For those class members whose accounts were not terminated by Facebook,
 23 the common inference would be that either they satisfied their obligations or Facebook excused
 24 any alleged non-performance by not terminating their accounts. *See CACI No. 303.*

25 Commonality further exists as to Facebook's breach. When each class member clicked on
 26 a third-party advertisement on Facebook.com [REDACTED]
 27 [REDACTED]

1 [REDACTED]
 2 [REDACTED]. See pp. 4-9, *supra*; Nassiri Decl. ¶¶8-14, Exhs. 10-16. As discussed below (p. 22), nothing
 3 more is required to establish that Facebook breached its contracts with class members.

4 Lastly, common factual and legal questions exist as to contract damages. “At class
 5 certification, plaintiffs must present a likely method for determining class damages, though it is
 6 not necessary to show the methods will work with certainty.” *Brazil*, 2010 WL 5387831 at *5.

7 Here, Facebook’s breach caused each class member to be [REDACTED]
 8 [REDACTED]
 9 [REDACTED] Vickery Depo.

10 69-71, 92-98, 104-06, 109-10, 113, 127-30, 132-33, 226-28, 244-47; pp. 9-10, *supra*. It is a
 11 common question whether, under the contract and Facebook’s promises, class members had a
 12 reasonable expectation of an exchange of value with respect to consent on a per-transaction basis.³
 13 Under contract law, “the party injured by a breach should receive as nearly as possible the
 14 equivalent of the benefits of performance,” with the aim of placing the injured party “in as good a
 15 position as [s]he would have been had performance been rendered as promised. This aim can
 16 never be exactly attained yet that is the problem the trial court is required to resolve.” *Brandon &*
 17 *Tibbs v. George Kevorkian Accountancy Corp.*, 226 Cal. App. 3d 442, 455, 277 Cal. Rptr. 40
 18 (1990). Here, Plaintiffs submit that the [REDACTED]

19 [REDACTED]
 20 [REDACTED] Vickery Depo. 87; pp. 9-10, *supra*. [REDACTED]
 21 [REDACTED]. Vickery Depo. 104-
 22 06, 113, 127-30, 132-33.

23
 24 ³ Unlike many privacy cases, Plaintiffs here are not suggesting that their ability to monetize their
 25 personal information in general was diminished or lost by virtue of Facebook’s non-consensual
 26 disclosures. Instead, Plaintiffs maintain that in order to obtain the benefit of their bargain, under
 27 the promises in Facebook’s Statement and Privacy Policy, they were entitled to receive valuable
 basis of this lawsuit.

1 And even if the common question of ascertainable monetary damages were to be resolved
 2 against the class, this would raise yet another common question – the availability of nominal
 3 damages to class members. As this Court has recognized, “[a] plaintiff is entitled to recover
 4 nominal damages for the breach of a contract, despite inability to show that actual damage was
 5 inflicted upon him, since the defendant’s failure to perform a contractual duty is, in itself, a legal
 6 wrong that is fully distinct from the actual damages.” *Farhang v. Indian Inst. of Tech.*, No. C-08-
 7 02658 RMW, 2010 WL 2228936, at * 7 (N.D. Cal. June 1, 2010) (denying motion to dismiss
 8 “even if plaintiffs cannot prove actual damages”) (quoting *Sweet v. Johnson*, 169 Cal. App. 2d
 9 630, 632, 337 P.2d 499 (1959)); Cal. Civ. Code § 3360 (“When a breach of duty has caused no
 10 appreciable detriment to the party affected, he may yet recover nominal damages.”); *accord*
 11 *MindGames, Inc. v. Western Pub. Co.*, 218 F.3d 652, 654 (7th Cir. 2000) (“the victim of a breach
 12 of contract is entitled to nominal damages”).

13 These common questions, separately and together, will “generate common answers apt to
 14 drive the resolution of the litigation.” *Wal-Mart*, 131 S. Ct. at 2551 (emphasis omitted); *Mazza*,
 15 666 F.3d at 588. Thus, commonality is satisfied as to the contract claim.

16 **b. Common Questions Exist on the Fraud Claim.**

17 The essential elements of Plaintiffs’ other remaining claim, for fraud, are: (1) a false
 18 representation; (2) knowledge of falsity; (3) intent to induce reliance; (4) justifiable reliance; and
 19 (5) resulting damage. *Engalla v. Permanente Med. Group, Inc.*, 15 Cal. 4th 951, 974, 64 Cal. Rptr.
 20 2d 843 (1997). All of these elements are subject to common proof.

21 The evidence shows that Facebook made multiple false assurances that it would not
 22 disclose users’ personal information to advertisers – in the Statement, Privacy Policy, and Privacy
 23 Guide, and in Facebook blog posts by Facebook’s CEO and other corporate officials. Nassiri
 24 Decl. ¶¶4-7, Exhs. 2-4 [¶10.2 of each], Exh. 5 (p. 7), Exh. 9; RJD ¶¶2-4, Exh. 6 [¶4], Exh. 7 [¶5],
 25 Exh. 8 (p. 1). Facebook’s own internal emails show [REDACTED]

26 [REDACTED] Nassiri
 27 Decl. ¶¶13-14, Exhs. 15-16. Facebook’s intent to induce reliance is established by the emphatic

1 nature of the representations themselves, particularly the April 2010 Facebook blog assurances
 2 that “we never provide the advertiser any names or other information” about people who click on
 3 ads and that “[a]ny assertion to the contrary is false,” as well as revisions to the Statement and
 4 Privacy Policy – ***all of which were made after Facebook plainly had knowledge of the falsity of***
 5 ***the representations.*** Nassiri Decl., Exhs. 3-4; RJD, Exhs. 6-8. Each of these elements is subject
 6 to common proof from Facebook’s own evidence. *See Brazil*, 2010 WL 5387831 at *5.

7 Common proof also exists of justifiable reliance. As discussed above at page 2, Facebook
 8 deems all persons who use or access Facebook to have agreed to its Statement and Privacy Policy,
 9 both of which explicitly assure users that Facebook will not share their personal information with
 10 advertisers, and common evidence also exists as to whether class members provided their real
 11 names to Facebook. Under California law, “an inference of reliance arises if a material false
 12 representation was made to persons whose acts thereafter were consistent with reliance upon the
 13 representation.” *Occidental Land, Inc. v. Superior Court*, 18 Cal. 3d 355, 363, 134 Cal. Rptr. 388
 14 (1976). This inference is common to all class members. *Brazil*, 2010 WL 5387831 at *5.

15 Common factual and legal questions likewise exist as to fraud damages. The ordinary
 16 measure of fraud damages in California is “out-of-pocket” loss, which constitutes the difference in
 17 actual value at the time of the transaction between what the plaintiff gave and what he or she
 18 received. *Alliance Mortgage Co. v. Rothwell*, 10 Cal. 4th 1226, 1240, 44 Cal. Rptr. 2d 352 (1995).
 19 As with the contract claim, there is a common factual question as to whether class members’
 20 consent to divulge their personal information has an ascertainable monetary value on a per-
 21 transaction basis. Vickery Depo. 69-71, 92-98, 104-06, 109-10, 113, 127-30, 132-33, 226-28, 244-
 22 47; pp. 9-10, *supra*. In the context of fraud, the more specific common question is whether this
 23 value exceeds the value of any per-transaction benefit the class members received from Facebook.
 24 *See Alliance Mortgage*, 10 Cal. 4th at 1240; pp. 9-10, *supra*.

25 Common questions also exist as to whether Facebook’s conduct, as discussed herein,
 26 constitutes fraud, oppression, or malice, and whether class members are thereby entitled to
 27 punitive damages on the fraud claim. Cal. Civ. Code § 3294(a). If such conduct is determined to

1 have been perpetrated by a Facebook employee, further common questions would be whether “an
 2 officer, director, or managing agent” of Facebook “authorized or ratified the wrongful conduct for
 3 which the damages are awarded or was personally guilty of oppression, fraud, or malice.” *Id.* §
 4 3294(b); *see White v. Ultramar, Inc.*, 21 Cal. 4th 563, 577, 88 Cal. Rptr. 2d 19 (1999) (to be a
 5 “managing agent,” a corporate employee must exercise “substantial discretionary authority over
 6 significant aspects of a corporation’s business”).

7 Any one of these common questions is apt to drive resolution of the fraud claim. Thus,
 8 each one suffices to satisfy Rule 23(a)(2). *Wal-Mart*, 131 S. Ct. at 2551; *Mazza*, 666 F.3d at 588.

9 **3. Typicality is Satisfied Here.**

10 “Typicality is a permissive standard, and only requires that the named plaintiffs claims’ are
 11 ‘reasonably coextensive’ with those of the class.” *Dalton v. Lee Publications, Inc.*, 270 F.R.D.
 12 555, 560 (S.D. Cal. 2010). Typicality exists where class representatives are members of the class
 13 and generally “possess the same interest and suffer the same injury” as the unnamed class
 14 members. *Falcon*, 457 U.S. at 156. “Some degree of individuality is to be expected in all cases,
 15 but that specificity does not necessarily defeat typicality.” *Smith*, 2008 WL 4156364 at *5
 16 (internal citation omitted). “In examining this condition, courts consider whether the injury
 17 allegedly suffered by the named plaintiffs and the rest of the class resulted from the same alleged
 18 common practice.” *Id.* (internal quotation omitted).

19 Here, there is no question that Plaintiff Marfeo’s claims are typical of those of other class
 20 members. Marfeo clicked on multiple Facebook advertisements, and Facebook’s own records
 21 show that [REDACTED]

22 [REDACTED] Jones Decl. ¶20. Although the records Facebook has produced thus far
 23 indicate that Plaintiff Pohl [REDACTED]
 24 [REDACTED], *id.* ¶19, Plaintiffs need only demonstrate typicality as to at least one class
 25 representative, and they clearly have done so.

4. Plaintiffs and Their Counsel Will Adequately Represent the Interests of Class Members.

To satisfy Rule 23(a)(4)'s adequacy prong, class counsel must be qualified and competent; the class representatives and their counsel must not have a conflict of interest with the rest of the class; and they must "prosecute the action vigorously" on behalf of the class. *In re Mego Financial Corp. Secur. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000); *Brazil*, 2010 WL 5387831 at *3. Where there is more than one named class representative, the "adequacy" requirement is satisfied as long as any one of them is adequate. *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 961 (9th Cir. 2009).

All of the prerequisites for adequacy are met here. Plaintiffs have retained counsel with extensive expertise and experience in prosecuting class actions and other major complex litigation. Nassiri Decl. ¶31, Exh. 33. In this very litigation, Plaintiffs' counsel successfully appealed to the Ninth Circuit to reverse a judgment on a motion to dismiss as to the contract and fraud claims. *In re Facebook Privacy Litig.*, 572 Fed. App'x. 494, 495 (9th Cir. 2014).

There also is no potential conflict between the named Plaintiffs (or their counsel) and absent class members. They are challenging the same conduct by Facebook, which resulted in all class members' personal information being disclosed to advertisers, and seek to benefit all class members by obtaining damages for them.

Facebook has suggested it may rely on Plaintiff Marfeo’s plea of *nolo contendre* to embezzlement in Rhode Island state court. However, such evidence is inadmissible against Marfeo in this civil case. Fed. R. Evid. 410(a)(2). And even an admissible felony record would not *per se* disqualify a class representative. *Randle v. Spectran*, 129 F.R.D. 386, 392 (D. Mass 1988) (citing *Haywood v. Barnes*, 109 F.R.D. 568, 579 (E.D.N.C. 1986)); *Stanich v. Travelers Indem. Co.*, 259 F.R.D. 294, 314-15 (N.D. Ohio 2009) (“the general rule . . . is that unrelated unethical or even criminal conduct is not sufficient to support a finding of inadequacy”). As discussed herein, the vast majority of the evidence of common issues in this case comes from Facebook itself. See pp. 2-10 & 12-17, *supra*. Thus, any attack by Facebook on Marfeo’s credibility would not interfere with Plaintiffs’ ability to meet their burden of proof on issues such as the existence of a contract, performance or excused non-performance, breach, falsity of

1 Facebook's representations, knowledge of falsity, justifiable reliance, valuation of users' personal
 2 information, etc.

3 Facebook has no admissible evidence that would render Marfeo an inadequate class
 4 representative. In any event, Plaintiffs have two other individuals, Jesse Tarli and Gilbert
 5 Mendoza, who are ready, able, and willing to serve as class representatives, Nassiri Decl. ¶29,
 6 particularly if this Court should determine that Marfeo or Pohl are inadequate.⁴ *See Robinson v.*
 7 *Sheriff of Cook County*, 167 F.3d 1155, 1157 (7th Cir. 1999) (court may increase the number of
 8 class representatives if named representative is found to be inadequate).

9 **D. The Class Satisfies the Requirements of Rule 23(b)(3).**

10 **1. Common Questions Predominate Over Individualized Issues.**

11 "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently
 12 cohesive to warrant adjudication by representation." *Smith*, 2008 WL 4156364 at *8 (quoting
 13 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). "Because no precise test can
 14 determine whether common issues predominate, the court must pragmatically assess the entire
 15 action and the issues involved." *Chum-Hoon*, 2006 WL 3093764 at *2 (quoting *Romero v.*
 16 *Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 489 (E.D. Cal. 2006)). The Court "must determine
 17 whether the elements necessary to establish liability . . . are susceptible to common proof or, if
 18 not, whether there are ways to manage effectively proof of any element that may require
 19 individualized evidence." *Villalpando*, 303 F.R.D. at 608. Courts thus separate the issues subject
 20 to "generalized proof" from those subject to "individualized proof" to determine whether plaintiffs
 21 have satisfied predominance. *Delagarza v. Tesoro Ref. & Mktg. Co.*, No. C-09-5803 EMC, 2011
 22 WL 4017967, at *10 (N.D. Cal. Sept. 8, 2011). Challenges to plaintiffs' legal theories and doubts
 23 about their ability to prevail at trial are irrelevant in determining whether common issues

24 ⁴ Facebook's records show that both Tarli and Mendoza clicked on advertisements on Facebook
 25 that generated a ref=profile string. Nassiri Decl. ¶30, Exh. 32. As discussed herein, Facebook also
 26 has [REDACTED]

27 [REDACTED] However, Facebook has not yet produced
 28 such information as to Tarli or Mendoza. *Id.*

1 predominate. *United Steel Workers v. Conoco-Phillips Co.*, 593 F.3d 802, 809 (9th Cir. 2010).

2 The discussion above at pages 12-17 demonstrates the predominance of common questions
 3 on every essential element of Plaintiffs' claims for breach of contract and fraud:

- 4 • Whether contracts exist between Facebook and each class member under which
 5 Facebook was obligated not to share class members' personal information without their consent
 6 with advertisers?
- 7 • Whether the class members performed their contractual obligations, particularly to
 8 not provide false information?
- 9 • Whether any non-performance of these obligations was excused by Facebook not
 10 exercising its contractual prerogative to terminate users' accounts for violation of the obligations?
- 11 • Whether Facebook breached its contracts with class members by causing their
 12 personal information to be transmitted via referer headers to advertisers in the ordinary course of
 13 how the Internet works?
- 14 • Whether Facebook falsely represented that it would not disclose users' personal
 15 information to advertisers?
- 16 • Whether Facebook knew of the falsity of such representations when they were
 17 made?
- 18 • Whether Facebook intended to induce class members to rely on these
 19 representations?
- 20 • Whether class members justifiably relied on these representations?
- 21 • Whether Facebook's breach caused each class member to be deprived of the benefit
 22 of their bargain with Facebook?
- 23 • Whether, under the contract and Facebook's promises, class members had a
 24 reasonable expectation of an exchange of value with respect to consent on a per-transaction basis?
- 25 • Whether the disclosed personal information has an ascertainable monetary value?

1 • Whether the monetary value of users' consent to divulge their personal information
 2 on a per-transaction basis exceeds the value of any per-transaction benefit the class members
 3 received from Facebook?

4 • Whether class members are entitled to nominal damages for breach of contract?
 5 • Whether Facebook's conduct constitutes fraud, oppression, or malice?
 6 • Whether such conduct was committed by a Facebook employee, and if so, whether
 7 a Facebook officer, director, or managing agent authorized or ratified the wrongful conduct, or
 8 was personally guilty of oppression, fraud, or malice?
 9 • Whether class members are entitled to punitive damages for fraud?

10 Plaintiffs anticipate that Facebook will focus on ostensible individual issues regarding
 11 [REDACTED]

12 [REDACTED] Nassiri

13 Decl. ¶15, Exh. 17 [Rog No. 7]. However, the estimates of Facebook's own expert show that [REDACTED]
 14 [REDACTED]
 15 [REDACTED] *Id.* ¶¶12, 16, 22, Exh. 14 [¶33 n.18],
 16 Exhs. 18, 25; Hung Depo. 131-36. There is no evidence at all of [REDACTED]
 17 [REDACTED]. Nassiri Decl. ¶12, Exh. 14; Hung Depo. 123-25. Facebook can only speculate that any class member actually
 18 utilized such measures, and speculation is an incompetent basis for opposing class certification.
 19 See Fed. R. Evid. 602, 701.

20 Moreover, Facebook's own [REDACTED]
 21 [REDACTED]. Jones
 22 Decl. ¶¶9-10; *see* Nassiri Decl. ¶23, Exh. 26. "Common issues predominate where individual
 23 factual determinations can be accomplished using computer records, clerical assistance, and
 24 objective criteria – thus rendering unnecessary an evidentiary hearing on each claim." *Smilow v.*
 25 *Southwestern Bell Mobile Sys., Inc.*, 323 F.3d 32, 40 (1st Cir. 2003); *see Ira Holtzman, C.P.A. v.*
 26 *Turza*, 728 F.3d 682, 684-85 (7th Cir. 2013) (predominance satisfied where records established
 27

1 which illicit facsimile transmissions “were received and which were not”).

2 Likewise, any perceived individual issues regarding whether class members performed
 3 their contractual obligations do not predominate over the common issues discussed herein. As
 4 discussed above, Facebook retained the right to terminate user accounts for providing Facebook
 5 with false information. Facebook’s records would show whether any class members’ accounts
 6 were terminated for this reason, and non-termination would raise an inference that class members
 7 fulfilled their obligations or that Facebook excused any non-performance. Nassiri Decl. ¶¶4, 15-
 8 21, Exhs. 2-4 [¶¶4 *et seq.* and 14 of each], Exhs. 17-23. Another way of answering any such
 9 questions would be when class members submit claim forms, which typically require the member
 10 to state her correct name, contact information and Social Security Number under penalty of
 11 perjury. *Id.* ¶32. If the information on this form does not match that given by the class member to
 12 Facebook, then the person could be excluded from the class. *Cf. Smilow*, 323 F.3d at 40.

13 Any attempt by Facebook to argue individual issues as to the reliance element of the fraud
 14 claim would fare no better. As discussed above at page 16, there is an inference of reliance
 15 because Facebook made materially false representations that it would not disclose users’ personal
 16 information to advertisers, and class members’ subsequent acts of providing their personal
 17 information were consistent with reliance. *Occidental Land*, 18 Cal. 3d at 363; *Brazil*, 2010 WL
 18 5387831 at *5.

19 In its Motion to Dismiss Plaintiffs Katherine Pohl and Wendy Marfeo for Lack of
 20 Standing, Facebook argues that “Plaintiffs have no evidence that any third party ever received and
 21 logged their so-called ‘personal information,’ that any third party was aware that they may have
 22 possessed such information, or that any third party actually used this information in any way.”
 23 (Dkt. 243 at 6). However, the discussion above at pages 4-9 shows Plaintiffs do, in fact, have
 24 evidence that advertisers received referer headers containing class members’ user IDs or
 25 usernames. Facebook has offered ***no legal authority*** for the proposition that Plaintiffs must show
 26 that advertisers “logged” this information, “actually used” it, or even were aware of it, to establish
 27 a claim for breach of contract or fraud. Even if these were deemed to be individual questions, at

1 most they would pertain to damages, and as such would be legally insufficient to defeat class
 2 certification in and of themselves. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513-14 (9th Cir.
 3 2013) (district court abused its discretion by denying class certification “because for each sub-
 4 class ‘the damages inquiry will be highly individualized’”); *Blackie*, 524 F.2d at 905 (“The
 5 amount of damages is invariably an individual question and does not defeat class action
 6 treatment”); *cf. Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013) (“a model purporting to
 7 serve as evidence of damages in this class action must measure only those damages attributable to
 8 that theory”).

9 The discussion herein demonstrates that Plaintiffs’ proposed class is “sufficiently cohesive
 10 to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S. at 623. To the extent any
 11 individual issues exist, they do not predominate, but instead are capable of being managed
 12 effectively in a class adjudication. *Villalpando*, 303 F.R.D. at 608. Accordingly, Plaintiffs have
 13 satisfied the “predominance” prong of Rule 23(b)(3).

14 **2. Class Litigation Is the Superior Means of Resolving Class Members’
 15 Claims.**

16 Where “classwide litigation of common issues will reduce litigation costs and promote
 17 greater efficiency, a class action may be superior to other methods of litigation.” *Valentino v.
 18 Carter-Wallace, Inc.*, 97 F.3d 1227, 1234–35 (9th Cir. 1996). A district court has “broad
 19 discretion” in determining whether class treatment is superior. *Kamm v. California City Dev. Co.*,
 20 509 F.2d 205, 210 (9th Cir. 1975). The following factors are pertinent to this analysis: (A) any
 21 interest class members might have “in individually controlling” prosecution of separate actions;
 22 (B) whether there is any other litigation concerning the controversy; (C) whether it is desirable to
 23 concentrate litigation of the claims in this forum; and (D) any “likely difficulties in managing a
 24 class action.” Fed. R. Civ. P. 23(b)(3).

25 The superiority requirement is easily satisfied here. Where, as here, “recovery on an
 26 individual basis would be dwarfed by the cost of litigating on an individual basis, this factor
 27 weighs in favor of class certification.” *Wolin v. Jaguar Land Rover North Am., LLC*, 617 F.3d

1 1168, 1175 (9th Cir. 2010). The parties also know of no individual lawsuits concerning the instant
2 controversy, but only other class actions which were transferred to this Court, stayed, and
3 administratively closed pending this action. Nassiri Decl. ¶33. Moreover, there would not be
4 significant difficulties in managing this matter as a class action. [REDACTED]

5 [REDACTED] . *Id.* ¶¶16-21,

6 Exh. 18 [Rog Nos. 7, 8, 13], Exhs. 19-23. Accordingly, maintenance of this litigation as a class
7 action would be efficient, fair, and superior to maintenance of potentially numerous individual
8 actions pertaining to the same set of common issues of law and fact. *Wolin*, 617 F.3d at 1175-76;
9 *see Barkouras v. Hecker*, Civ. No. 06-0366 (AET), 2006 WL 3544585 at *4 (D.N.J. Dec.8, 2006)
10 (“As the Court is forced to select from outcomes ranging from no suits being brought at all, to
11 first-come Plaintiffs rendering Defendants bankrupt, or a class action proceeding whereby its
12 members may receive nominal damages, the Court finds that the class action disposition is
13 superior to all other forms of adjudicating this dispute.”).

14 **V. CONCLUSION**

15 Plaintiffs respectfully ask the Court to grant their Motion for Class Certification.

16 Dated: October 28, 2015

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18 Kassra P. Nassiri

19 Attorneys for Plaintiffs and the Putative Class

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